

REMARKS

The foregoing amendments have been made in response to the office action dated May 9, 2008. Claims 12 and 25-27 have been amended. Claim 28 has been added. Claims 12-16, 19 and 25-28 are pending, with claim 12 being the only independent claim. Reconsideration of the rejection of the claims is hereby respectfully requested.

In the office action of May 9, 2008, claims 12-16, 19 and 25-27 were examined. Claims 12-15 and 25-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,415,637 (Khosravi) in view of U.S. Patent No. 5,372,587 (Hammerslag). Claims 16 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Khosravi in view of Hammerslag, further in view of U.S. Patent No. 5,461,982 (Edwards). It is noted that the examiner suggested further clarification of the flexible member and catheter fixation points (30, 26) as shown in applicant's Figure 1 may patentably distinguish over the art of record.

Claim 12 has been amended both to distinguish over the cited art, and to add clarity to the claim. In particular, claim 12 has been amended to clarify references to "distal ends" and "proximal ends" so that it is clear when such terms are used whether those ends belong to the tubular shaft or the resilient members. As suggested by the examiner on page 5 of the office action, claim 12 has been amended to provide some further clarification of the relationship between the connection points of the resilient members and the tubular shaft. Claim 12 now recites "all distal ends of the resilient members being joined together and fixed longitudinally directly to the shaft adjacent the distal end of the shaft". Claim 12 also recites "the resilient members lie parallel to the longitudinal axis along and adjacent the shaft when unloaded". It is respectfully submitted that these amendments to claim 12 distinguish over the cited art.

Khosravi, the primary reference relied upon by the examiner, relates to an intravascular catheter assembly which includes an elongated catheter body 11 and an expandable region 12 secured to the distal end of the catheter body. A control wire or cable 13 for adjustment of the axial distance between the proximal end 14 and the distal end of the expandable region is used to vary the radial expansion of the expandable region 12 (see col. 4, lines 58-65). Expandable region 12 is

formed from a plurality of hypotubes 28, each having a lumen and being arranged alongside one another in a substantially cylindrical fashion. It is these hypotubes 28 which the examiner states correspond to the radially extensible tissue engagement mechanism comprising the resilient members of the present invention (see page 3 of the office action). As is apparent from the disclosure in Khosravi, and the examiner's characterization of that disclosure, body 11 of the Khosravi catheter assembly terminates longitudinally before the expandable region 12 which comprises the plurality of hypotubes 28.

Claim 12 now distinguishes over Khosravi, in part, because it recites "all distal ends of the resilient members being joined together and fixed longitudinally directly to the shaft adjacent the distal end of the shaft". In Khosravi, the distal ends of the resilient members are not joined directly to the shaft, but rather are spaced longitudinally from the distal end of the catheter shaft. Therefore, they cannot be fixed directly to the catheter shaft as recited in claim 12. Moreover, claim 12 recites that the resilient members lie parallel to the longitudinal axis along and adjacent the shaft when unloaded. As noted, in Khosravi, the hypotubes 28 are disposed distally of the shaft, and do not lie along and adjacent the shaft when unloaded. Therefore, for at least these reasons, claim 12 distinguishes over Khosravi.

Hammerslag neither discloses nor suggests any sort of resilient members that bow radially outwardly upon the application of a compressive load, let alone resilient members which have their distal ends fixed directly to the shaft of a catheter and lie along and adjacent the shaft when unloaded. Therefore, the addition of Hammerslag does not cure the defects of Khosravi. It is noted that applicant has deleted the recitation "and the distal end of the shaft is rotated through an angular displacement". It appears from the office action, that Hammerslag was cited only for the proposition that it discloses this limitation. Since this limitation has now been removed, it is submitted that Hammerslag is no longer properly citable against claim 12.

Each of claims 13-16 and 19 is dependent from claim 12, and is patentable over Khosravi, Hammerslag and Edwards for at least the same reasons as set forth above with respect to claim 12.

Claims 25-27 have been amended to respond to the rejection of claims 25 and 27 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner noted that the subject matter of claims 25 and 27, specifically the limitation “causing the distal end of the shaft to rotate through an angular displacement,” is already disclosed in independent claim 1. In response, as noted above, this limitation has been deleted from claim 12. Therefore, claims 25 and 27 no longer recite that which was already recited in independent claim 1. Claim 25 also has been amended to more clearly recite the invention by reciting “wherein applying a compressive load causes the distal end of the shaft to rotate through an angular displacement independently of the resilient members.” For clarity claim 27 has been rendered dependent from claim 12 and not claim 25, as previously recited.

Claim 25 is patentable over Khosravi for at least the same reasons as set forth with regard to claim 12, since it is dependent from claim 12. Furthermore, it is patentable over a combination of Khosravi and Hammerslag for at least two additional reasons. In the first place, one of skill in the art would not have combined Hammerslag with Khosravi absent the hindsight provided by applicant’s teachings herein. Even if the references were combined, however, the distal end of the Khosravi shaft terminates prior to the hypotubes. This distal end of the shaft of Khosravi could not be rotated through an angular displacement without also rotating the hypotubes. Certainly, Khosravi does not disclose any such rotation and Hammerslag fails to disclose any resilient members independently of which its shaft is rotated. Finally, there would be no motivation to rotate this distal end of the Khosravi shaft independently of the hypotubes, since there would be no therapeutic reason for doing so. For all of these reasons, it is submitted that claim 25 is patentable over Khosravi alone, or over a combination of Khosravi and Hammerslag.

Claim 26 was amended simply to clarify the claim without changing its scope. Since claim 26 is dependent from claim 12, it is submitted that it too is patentable over Khosravi, or over a combination of Khosravi and Hammerslag for at least the same reasons as set forth above with regard to claim 12.

Claim 27 recites providing a pull wire coupled to the radially extensible tissue engagement mechanism, pulling the pull wire to apply the compressive load and rotating the shaft through an angular displacement by application of the compressive load. It is submitted that claim 27 is patentable over Khosravi alone, or Khosravi combined with Hammerslag for substantially the same reasons as set forth above for claim 25.

New claim 28 has been added and is dependent from claim 12. Claim 28 recites that “applying a compressive load causes the shaft to bow outwardly”. As shown in Fig. 1 of the present application, when a compressive load is applied, the shaft actually bows outwardly along with the resilient members. This is what in part causes the distal end of the shaft to rotate. In Khosravi, the shaft of the catheter is not disclosed to bow outwardly upon application of a compressive load to the hypotubes. Also, the distal tip of Hammerslag is not shown to bow outwardly upon application of a compressive force. Therefore, it is respectfully submitted that claim 28 distinguishes over Khosravi, and Khosravi combined with Hammerslag, for at least this reason, and for the reasons already discussed with respect to claim 12.

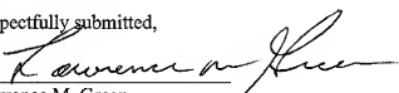
For the foregoing reasons, it is respectfully submitted that this amendment has placed all of claims 12-16, 19 and 25-28 in condition for allowance. Reconsideration and allowance of the claims are respectfully requested.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. B0953.70002US00.

The examiner is invited to telephone applicants' undersigned attorney should he feel that such a telephone call would further the prosecution of the present application.

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Respectfully submitted,

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